

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 527 of 2006()

CRRP.5/2005 of ADDL.SESIONS COURT, KOZHIKODE
MC.11/2001 of JUDL.MAGISTRATE OF FIRST CLASS, PAYYOLI

PETITIONER: REVISION PETITIONER/RSPONDENT.

PAKKU, S/O.SOPPI, AGED 52 YEARS,
VAYOTH VEEDU, MELADI AMSOM, KEEZHOOR DESOM,
KOYILANDY TALUK.

BY ADV. SRI.P.S.SREEDHARAN PILLAI

SRI.K.B.SAJEESH
SRI.P.GOPINATH
SRI.C.S.SUNIL
SMT.C.G.PREETHA
SRI.M.PRAVEESH

RESPONDENTS: PETITIONER.

1. NAGATH SUBAIDA, D/O.ABDULLA, AGED 37
YEARS, SAFA HOUSE, MELADI AMSOM, KEEZHOOR
DESOM, KOYILANDY TALUK.
2. THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 527 OF 2006

Dated this the 13th day of February, 2007

ORDER

The petitioner has suffered an order directing him to pay an amount of Rs.1,90,500/- under Sec.3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (for short 'the Act') to his divorced wife – the claimant/the 1st respondent herein.

2. Marriage and divorce are admitted. The liability to pay the amount under Sec.3 of the Act is also not seen disputed. In fact, the contention is that an amount of Rs.1,30,000/- has been paid as the amounts payable under Sec.3 of the Act, as evidenced by Ext.D1 agreement. The petitioner, of course, had raised a further contention that his wife was unchaste and unfaithful to him and that it was, in these circumstances, that he was obliged to divorce her.

3. Before the learned Magistrate the claimant herself examined as P.W.1. P.Ws.2 and 3 were also examined. She proved Exts.P1 to P11. The petitioner examined himself as

C.P.W.1. C.P.Ws.2 to 5 were also examined. Ext.D1 agreement allegedly executed by P.W.1 was also relied on by the petitioner herein.

4. The courts below concurrently came to the conclusion that Ext.D1 has not been proved to be genuine and true. Accordingly, they discarded Ext.D1. They came to the further conclusion that an amount of Rs.1,90,500/- is payable - Rs.10,500/- as maintenance during the period of Iddat and Rs.1,80,000/- being the reasonable and fair provision and maintenance to the divorced wife - (Rs.3000/- x 12 x 5).

5. Called upon to explain the nature of the challenge which the petitioner wants to mount against the impugned concurrent judgments, the learned counsel for the petitioner submits that the courts below have erred grossly and perversely in coming to the conclusion that no reliance can be placed on Ext.D1. The learned counsel for the petitioner relies on the evidence of C.P.W.1 himself as also the attestors – C.W.Ps.2 and 3 in support of the contention that Ext.D1 must have been accepted and acted upon.

6. The revisional court appears to have given detailed reasons for its conclusion that Ext.D1 cannot be accepted. They

are:

- (i) P.W.1 has specifically denied Ext.D1 agreement.
- (ii) The expert - P.W.3, and his report Ext.P10 also support the conclusion that P.W.1 has not signed Ext.D1.
- (iii) There is no reference to Ext.D1 in earliest document which must have been there if such an agreement had been entered into.
- (iv) No relative or person close to P.W.1 is even shown as an attester in Ext.D1.
- (v) Ext.D1 is not produced along with the counter statement.

In these circumstances, the courts below did not place any crucial reliance on the evidence of C.P.Ws.1 to 3.

7. Having considered all the relevant inputs, I am not certainly persuaded to invoke my extraordinary inherent jurisdiction available under Sec.482 of the Cr.P.C. to interfere with the concurrent conclusion on facts by the courts below that Ext.D1 cannot be safely accepted and acted upon. I must alertly remind myself of the nature and quality of the jurisdiction which I am called upon to exercise. It is for this purpose that I have closely looked into the reasons given by the courts below

for not relying on Ext.D1. Suffice it to say that I concur with the concurrent conclusion of the courts below that Ext.D1 has not been proved satisfactorily and no safe reliance can be placed on Ext.D1. That conclusion on facts does not at all warrant interference by invoking the jurisdiction under Sec.482 of the Cr.P.C.

8. A further contention is raised that the claimant/the divorced wife has been unchaste and therefore she is not entitled to any amount under Sec.3 of the Act. This is a self- defeating argument, as, even according to the petitioner, he had voluntarily paid an amount of Rs.1,30,000/- under Ext.D1 which the courts below have not chosen to accept and act upon. In these circumstances, the contention raised by the petitioner who himself, according to him, had voluntarily paid an amount of Rs.1,30,000/- to his divorced wife, that he is not liable to pay any amount on account of her contumacious conduct cannot be accepted.

9. Thirdly and finally it is contended that the quantum of amount directed to be paid is not justified. I take note of the reasons given by the courts below. I take note of the admitted assessment of the petitioner that he would be liable to pay an

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amount of Rs.1,30,000/-. In these circumstances, I am satisfied that no interference with the quantum fixed by the courts below is also justified or warranted.

10. In the result, this Crl.M.C. is dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge